NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C

S. HRG. 99-797

THE ARMED CAREER CRIMINAL ACT AMENDMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2312

A BILL TO AMEND TITLE VII OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, RELATING TO ARMED CAREER CRIMINALS, TO INCLUDE A SERIOUS DRUG OFFENSE AND ANY CRIME OF VIOLENCE AS AN OFFENSE SUBJECT TO ENHANCED PENALTIES

MAY 14, 1986

Serial No. J-99-107

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

62-982 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S521-79

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky
JOHN P. EAST, North Carolina

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

DENNIS W. SHEDD, *Chief Counsel and Staff Director*
DIANA L. WATERMAN, *General Counsel*
MELINDA KOUTSOUMPAS, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON CRIMINAL LAW

PAUL LAXALT, Nevada, *Chairman*

STROM THURMOND, South Carolina
CHARLES McC. MATHIAS, Jr., Maryland
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
HOWARD M. METZENBAUM, Ohio

WILLIAM S. MILLER, Jr., *Chief Counsel and Staff Director*

CONTENTS

OPENING STATEMENT

Page

Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania 1

PROPOSED LEGISLATION

S. 2312—A bill to amend title VII of the Omnibus Crime Control and Safe Streets Act of 1968, relating to armed career criminals, to include a serious drug offense and any crime of violence as an offense subject to enhanced penalties 2

CHRONOLOGICAL LIST OF WITNESSES

Wyden, Hon. Ron, a Representative in Congress from the State of Oregon 4

Knapp, James I.K., Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, accompanied by Edward S.G. Dennis, Jr., U.S. attorney, Philadelphia, PA; James J. West, U.S. attorney, Harrisburg, PA; and Joseph E. diGenova, U.S. attorney, Washington, DC 8

Queen, David Dart, Deputy Assistant Secretary for Enforcement, U.S. Department of the Treasury 19

Castille, Ronald D., district attorney, Philadelphia, PA, on behalf of the National District Attorney's Association 47

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Castille, Ronald D.:
- Testimony 47
- Prepared statement 49

Dennis, Edward S.G., Jr.: Testimony 15

diGenova, Joseph E.: Testimony 16

Knapp, James I.K.:
- Testimony 8
- Prepared statement 11

Queen, David Dart:
- Testimony 19
- Prepared statement 26
- Letter to Senator Specter, June 5, 1986 29

West, James J.: Testimony 18

Wyden, Hon. Ron:
- Testimony 4
- Prepared statement 6

THE ARMED CAREER CRIMINAL ACT AMENDMENTS

WEDNESDAY, MAY 14, 1986

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:33 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter presiding.

Staff present: Neal Manne, chief counsel; Mike Russell, counsel; and Tracy McGee, chief clerk.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. This hearing of the Subcommittee on Criminal Law of the Judiciary Committee will now proceed. Our subject matter this morning involves S. 2312, which contains amendments to the armed career criminal bill.

The armed career criminal bill was part of the Omnibus Crime Control Act passed in 1984, which involves for the first time the Federal Government in violent street crime. It is a bill which makes it a Federal offense for anyone to carry a firearm after being previously convicted of three or more robberies or burglaries.

This bill passed the Congress and was signed into law by the President after very extensive consideration. At that time the so-called predicate offenses were limited to robberies or burglaries because of the inherent resistance in some quarters to bring the Federal Government into the fight against street crime.

I think the experience in the past year-and-a-half with the career criminal bill has been excellent, and it has allayed fears in some quarters that there would be undue interference with the approaches of the local district attorneys.

The time seems ripe in many quarters, including the Department of Justice, to expand the armed career criminal bill to include other offenses, which S. 2312 seeks to do.

[Text of S. 2312 follows:]

II

99TH CONGRESS
2D SESSION

S. 2312

To amend title VII of the Omnibus Crime Control and Safe Streets Act of 1968, relating to armed career criminals, to include a serious drug offense and any crime of violence as an offense subject to enhanced penalties.

IN THE SENATE OF THE UNITED STATES

APRIL 16 (legislative day, APRIL 8), 1986

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title VII of the Omnibus Crime Control and Safe Streets Act of 1968, relating to armed career criminals, to include a serious drug offense and any crime of violence as an offense subject to enhanced penalties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the second sentence of subsection (a) of section 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1202(a)) is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a crime of violence or a serious drug offense, or both,".

(b) Subsection (c) of section 1202 of title VII of such Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof the following:

"(8) 'serious drug offense' means an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); and

"(9) 'crime of violence' means—

"(A) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

○

Senator SPECTER. Today, we have a distinguished group of witnesses to testify on this subject, and I would like to call first on the Honorable Ron Wyden, a member of the U.S. House of Representatives, who was the original sponsor of the armed career criminal bill in the House.

Representative Wyden, thank you for your assistance in the past, and for your leadership on this important subject, and we look forward to your testimony.

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WYDEN. Well, Senator, thank you very much. I certainly will not be very long this morning, and I want to commend you, Senator Specter, for your tremendous leadership in this area.

I think that this is really a textbook case of what needs to be done in the law enforcement field to look at new approaches where Federal and local prosecutors can work together.

I just want you to know, Senator Specter, that it has been a pleasure to work with you in the past on this important issue, and I just want to state for the record that I think that you have gone about this effort to extend the armed career criminal bill in a very, very responsible way.

I do not think it is widely known, for example, that you went forward at the beginning of this effort to survey the prosecutors in this country. I know my prosecutor out in Portland, OR, was sent a detailed survey about it.

It is clear that local and Federal prosecutors feel that this is a logical and natural extension of the very good effort that we began as part of the Omnibus Crime Control Act. In the past 6 months alone, Federal prosecutors have obtained 60 indictments and 22 convictions under the Carrier Criminal Act.

In my area, in Multnomah County, OR, we have been one of the leading jurisdictions to utilize this tool. It has been used in a wide variety of different cases, and what local and Federal prosecutors who are using it are saying—and I know you are going to hear as part of these hearings and as part of the record many, many instances where it has been used successfully—is that it brings to bear a new kind of leverage into the process.

In the past, we have known that a lot of these career offenders have just tried to beat the odds. They know that the local system is overworked; they know that budget cutbacks have taken their toll; that sometimes if they can just stretch out the clock, the evidence will not be very usable and they will be able to beat the odds and not serve any time.

What the career criminal legislation does, both originally and with our extension, is it changes the odds. It gives the local and the Federal prosecutors a new leverage against some of the worst offenders, and I think that this is much, much overdue.

I am particularly pleased that we have been able to get the support of Federal officials, including the Director of the Bureau of Alcohol, Tobacco and Firearms, and Assistant Attorney General John Bolton, in going forward with this effort.

I think the only other point that I would want to make, Mr. Chairman, deals specifically with the two expansions that we seek to include in our legislation.

First, I think it is just a matter of simple logic to include crimes of violence as potential predicate offenses. It does not make any sense to say that a referral under the act is possible for a three-time bank robber, but not an habitual offender with prior convictions for rape and murder.

The second proposed expansion, of course, is to serious drug offenses, the least serious of which is defined in the Code as possession with intent to distribute.

All the evidence that you have collected, Mr. Chairman, and that we have seen in our investigation indicates that drugs and violent crime go hand-in-hand. In my State, violent drug dealers are flooding Oregon and the Northwest with cheap, lethal Mexican black tar heroin, and the local law enforcement officials in the Northwest are just outmanned and really overwhelmed in the effort to deal with the problem. So we have got this very serious new phenomenon.

Other very serious problems with marijuana farms and methamphetamine laboratories in the rural areas are coming at a time when, as you know, budget constraints have restricted the number of Federal agents that would be available.

Some of the statistics that I thought were particularly important as we began to go forward and work with you on this is that prosecutors believe that at least 80 percent of all the murders in Oregon can be traced directly to drugs of one kind or another.

The FBI has estimated for us in Oregon that 80 percent of the 210 bank robberies in the State were drug-related.

So, Mr Chairman, I would ask unanimous consent that the rest of my statement could be submitted in the record. But I just want to tell you how much I have enjoyed working with you and your capable staff on this, and I think that this would be another very, very useful step to help law enforcement across this country and I am looking forward to working with you.

Senator SPECTER. Well, thank you very much, Congressman Wyden, for your very generous comments and your very constructive remarks. I think the record should reflect that you have introduced an identical bill, H.R. 4639. Congressman Hughes of New Jersey, the chairman of the Criminal Law Subcommittee, has a similar bill.

I am optimistic that we will be able to move this legislation expeditiously through the Senate Judiciary Committee and through the Senate, then hopefully through the House, and finally to the President's desk for signature.

Mr. WYDEN. Well, I talked with Chairman Hughes just yesterday about our legislation, Chairman Specter, and I am very encouraged as well. I think that he wants to put something together in this regard, and I share your view that we can get this to the President fairly quickly.

Senator SPECTER. Fine. Thank you very much, Congressman.

Mr. WYDEN. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF REPRESENATIVE RON WYDEN

THE ARMED CAREER CRIMINAL ACT

Mr. Chairman, I'm very appreciative of the opportunity to appear before your Subcommittee today to talk about the Armed Career Criminal Act of 1984 and amendments to the Act that Senator Specter, Congressman Hughes and I have recently proposed.

As you know, Mr. Chairman, the 1984 Armed Career Criminal Act permits federal prosecution of career criminals with three or more prior armed robbery or burglary convictions. Such criminals found to be illegally in possession of firearms can -- at the discretion of local prosecutors -- be remanded to federal authorities. If convicted, a mandatory 15 year sentence in federal prison is triggered.

This Armed Career Criminal Act has worked very well. Local and federal prosecutors have formed task forces all across the country to ensure the efficient referral of career criminal cases to the federal system. In the past six months alone, federal prosecutors have obtained 60 indictments and 22 convictions under the Act.

Passage of the 1984 Act culminated several years of effort on the part of Senator Specter and myself. One of the big obstacles we faced was a perception that we were proposing an unwarranted extension of federal criminal jurisdiction. Some argued that not only would federal authorities become involved in matters traditionally reserved for state and local prosecutors, but that federal and local officials could not or would not work together on deciding which cases to refer to the federal system.

Throughout the debate, I felt that that argument contained a lot more smoke than fire. And since its passage, I'm even more convinced that local and federal authorities not only can but have worked together closely to make the Act work as Congress intended. I'm not aware of any strains that have developed anywhere in the country in getting this program off the ground. And in Portland, Oregon, cooperation between local and federal officials has been superb.

Just this past weekend, the U.S. Attorney in Oregon and the District Attorney in Portland jointly sent a letter to the Portland Oregonian concerning the Career Criminal Act. They describe it as "a valuable law enforcement tool that has been and can be used against habitual, violent offenders." They go on to state unequivocally that there has been no infringement on local prosecutorial discretion -- and then cite what I believe to be the most important advantage of this Act. That advantage is leverage. As these officials put it, "both the prospect of such a (federal) referral and its use in federal court gives prosecutors more leverage in obtaining guilty pleas from dangerous offenders."

Federal and local law enforcement officials -- including the Director of the Bureau of Alcohol, Tobacco and Firearms and Assistant Attorney General John Bolton -- are now telling the Congress that the Act would be much more effective if the predicate offenses were extended beyond robbery and burglary to include crimes of violence and serious drug offenses. That's precisely what the bill we recently introduced would do.

In the same letter, our U.S. Attorney and District Attorney go on to say that "we would like to see this law expanded to other crimes of violence and to serious drug offenses," which would "give us new tools for prosecuting career criminals whose prior offenses could be heroin smuggling or rape. If (HR 4639) is enacted into law, we will be able to move against a wider array of dangerous individuals in a more effective manner. At a time when drugs and violent crime are an epidemic in our society, we need all the help we can get."

Mr. Chairman, that simple and eloquent statement of support for this legislation from those who are on the front lines of the fight against violent crime really says it all.

But let me comment briefly on the two specific proposed expansions of the 1984 Act. First, it seems a matter of simple logic to include "crimes of violence" as potential predicate offenses. It doesn't make much sense to say that a referral under that Act is possible for a three time bank robber but not a habitual offender with prior convictions for rape or murder.

The second proposed expansion is to "serious drug offenses," the least serious of which is defined in the federal criminal code as "possession with intent to distribute." All available evidence indicates that drugs and violent crime go hand in hand. In Oregon, violent drug dealers are flooding the state with cheap, lethal Mexican black tar heroin -- and local law enforcement officials are outmanned, outgunned, outspent and overwhelmed in their efforts to stem this tide. Despite this extremely serious new phenomenon and continuing major problems with marijuana farms and methamphetamine laboratories in rural areas, budget constraints have reduced the number of full time local narcotics investigators in the entire state to less than three dozen. And the same budget problems deny these investigators access to the large sums of cash necessary to snare those operating at the higher levels of the heroin distribution chain. Then, because of an equally severe jail overcrowding problem, those few drug dealers convicted of possession of heroin with intent to distribute typically serve less than six months of multi-year sentences.

In Oregon and across the country, illicit trafficking in narcotics relentlessly fuels a spiraling violent crime rate. Prosecutors believe that at least 80 per cent of all the murders in Oregon can be traced directly to drugs of one kind or another. And the FBI has estimated that 80 per cent of the 210 bank robberies in Oregon last year were drug related.

The amendments we have proposed to the Career Criminal Act will help rid our streets and neighborhoods of these insidious criminals, the habitual, violent offenders who use or peddle illegal drugs -- and will stop at nothing to further their habit or their business.

Mr. Chairman, we must constantly look for ways to come to the aid of hard-pressed state and local law enforcement officials who, in Oregon and elsewhere, are clearly losing the war against drugs and violent crime. We must make sure that law enforcement officials at every level have at their disposal as many effective weapons as possible. The Armed Career Criminal Act Amendments would add one more arrow to the law enforcement quiver and I hope the Subcommittee and the Senate will support this effort.

Senator SPECTER. I would like now to turn to a panel of Federal law enforcement officials: Deputy Assistant Attorney General James Knapp, Criminal Division, U.S. Department of Justice; U.S. Attorney Edward Dennis from the Eastern District of Pennsylvania; acting U.S. Attorney James West from the Middle District of Pennsylvania; and U.S. Attorney Joseph diGenova from Washington, DC.

Gentlemen, thank you very much for joining us here, and let us begin with you, Mr. Knapp.

STATEMENT OF JAMES I.K. KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY EDWARD S.G. DENNIS, JR., U.S. ATTORNEY, PHILADELPHIA, PA; JAMES J. WEST, U.S. ATTORNEY, HARRISBURG, PA; AND JOSEPH E. diGENOVA, U.S. ATTORNEY, WASHINGTON, DC

Mr. KNAPP. Thank you, Mr. Chairman. I am pleased to be here to present the views of the Department of Justice on S. 2312, your bill to expand the scope of what is commonly known as the Armed Career Criminal Act.

I am pleased to have with me here today, and they will briefly speak after I conclude speaking, three U.S. attorneys who have had a lot of experience in the field with the Armed Career Criminal Act, as it presently is on the books.

On my immediate right is Ed Dennis, the U.S. attorney in the Eastern District of Pennsylvania. On my immediate left, Joe diGenova, the U.S. attorney here in the District of Columbia; and on my far left, Jim West, the U.S. attorney in the Middle District of Pennsylvania.

The Department, of course, is pleased to support your bill. The Armed Career Criminal Act was enacted as chapter XVIII of the Comprehensive Crime Control Act of 1984. It did not create a new crime, but rather increased the penalty for the existing Federal offense set out in 18 U.S.C. Appendix 1202, which, as you know, prohibits convicted felons and certain other classes of persons from possessing firearms. Violations were punishable by up to 2 years imprisonment.

The Armed Career Criminal Act drastically increased the penalty for those armed felons whose previous convictions included three or more State or Federal convictions for robbery or burglary. For such career burglars and robbers, the punishment is imprisonment for not less than 15 years. Suspension of sentence, probation and parole are all specifically excluded.

As you know, in introducing this bill, Mr. Chairman, the career criminal statute has worked well to assist local prosecutors with some of their cases. Local prosecutors are able to refer their most hardened robbers and burglars for Federal prosecution where prosecution under State law would or might not result in an adequate sentence.

Statistics compiled by the executive office for U.S. attorneys indicate that during fiscal year 1985, 13 defendants were charged as armed career criminals in nine separate indictments or information. I think that figure is subject to qualification. The way the sta-

tistics have been counted up until this time—they are changing it, but up until this time, they only count something when it is the first count in the indictment. So, actually, that number is on the low side.

Senator SPECTER. What are those figures again, Mr. Knapp?

Mr. KNAPP. The figures we have are 13 defendants were charged in fiscal year 1985. I suspect that is low because that only reflects where that particular charge appears as count one in the indictment. They are changing that system now to get a more accurate count.

As the footnote in my testimony indicates, there are at least 14 people in prison under the new statute. So, obviously, that was a low count, and there may even be more in prison under that statute because the figure we got from the Bureau of Prisons would not include persons who were sentenced not just under the Armed Career Criminal Act, but were also sentenced under another count which carried the same or a greater penalty. So, certainly, that 14 is a low figure.

S. 2312 would expand the coverage of the act by broadening the class of predicate crimes that make an armed person a career criminal. It would amend the statute so it would provide for a 15-year mandatory minimum, without probation, parole or suspension of sentence, for persons who have three prior convictions for a crime of violence or for a serious drug offense, or both.

Both the terms "crime of violence" and "serious drug offense" are defined in the bill. The term "crime of violence" would include robberies and burglaries, since both are felonies that by their nature involve a substantial risk that physical force against the person or property of another may be used in the course of committing them.

We support this expanded coverage. Persons who have been convicted of, for example, two rapes and an assault with a deadly weapon are every bit as dangerous, and have shown they are just as much a career criminal, as a person who has been convicted of two burglaries and a robbery.

We realize that a broadening of the act in the fashion of S. 2312 poses an issue with regard to whether the Federal Government could be said to be intruding into areas of the criminal justice system traditionally the province of the States.

However, the purpose of the Armed Career Criminal Act and its effect on the basis of our experience with the act to date is to assist the States, not usurp their authority. We are confident that with careful coordination between State and Federal prosecutors, through the law enforcement coordinating committees and other means, we can make effective use of both Federal and State resources against career criminals, and thereby enhance public safety for all our citizens.

Such coordination is already taking place in many judicial districts around the country with respect to career robbers and burglars under the existing act, and there is every reason to believe we can duplicate this cooperative effort in dealing with such dangerous persons as armed recidivist rapists, murderers and drug dealers.

We are also aware that expanding the act has the potential for creating some impact on the Federal prison system. Obviously, space must be found to house persons serving 15-year or longer sentences.

There is, however, in our view, no reason to fear that enactment of this legislation will result in prison overcrowding. The present statute has not caused a problem, and in order to violate this act, it should be pointed out that the defendant must be committing an offense which was already Federal by definition even without the presence of the prior convictions.

Certainly, discretion will be used in utilizing the act. Moreover, even where the offense without the priors would normally be prosecuted in State court, the broadening of the act is unlikely to result in pressure for more Federal prosecutions in every State, since many States have habitual offender statutes with equivalent penalties, or perhaps greater.

There are two matters, though, which I think I ought to mention that you may want to consider by way of amendment to the bill, or clarification.

First of all, in regard to the definition of the term "serious drug offense," we think it should include an offense for which a maximum term of imprisonment of 10 years or more, is proscribed in the Controlled Substances Import and Export Act, as well as in the two acts cited in the definition quoted in my prepared testimony and, of course, in your bill, in order to cover persons whose drug convictions have involved drug importation or exportation.

Not addressed in my prepared testimony, but an issue which I was alerted to this morning, is that the way the term "crime of violence" is defined, it could include simple misdemeanors.

I would suggest that the Senator may want to consider limiting the prior convictions to those situations where the prior offense involved a crime which was punishable by a term of 1 year or more in prison; not necessarily that the person received a felony sentence, but that the offense itself was of a serious enough nature that a felony sentence could have been imposed, or what we traditionally think of as a felony sentence.

Certainly, obviously, any assault with a deadly weapon, rape, murder, or anything of that sort should clearly be included.

In conclusion, Mr. Chairman, let me say once again the Department enthusiastically supports this bill. I would like to yield now briefly to my colleagues from the U.S. attorneys' offices to briefly discuss their own experience with the Armed Career Criminal Act.

First, I will yield to Mr. Dennis.

Senator SPECTER. Thank you very much, Mr. Knapp.

[The prepared statement follows:]

PREPARED STATEMENT OF JAMES I.K. KNAPP

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to present the views of the Department of Justice on S. 2312, a bill to expand the scope of what is commonly known as the "Armed Career Criminal Act." The Department of Justice is pleased to support this bill.

The Armed Career Criminal Act of 1984 was enacted as Chapter XVIII of the Comprehensive Crime Control Act of 1984. It did not create a new crime, but rather increased the penalty for the existing federal offense set out in 18 U.S.C. App. 1202 which as you know, Mr. Chairman, prohibits convicted felons and certain other classes of persons from possessing firearms. Violations are punishable by up to two years imprisonment. The 1984 Armed Career Criminal Act drastically increased the penalty for those armed felons whose previous convictions included three or more state or federal convictions for robbery or burglary. For such career burglars and robbers, the punishment is imprisonment for not less than fifteen years. Suspension of a sentence, probation, and parole are all specifically excluded for such a defendant so that he or she actually serves at least fifteen years in prison.

As you noted in introducing S. 2312, Mr. Chairman, the Career Criminal statute has worked well to assist local prosecutors with some of their cases. Local prosecutors are able to refer their most hardened robbers and burglars for federal prosecution where prosecution under state law would or might not result in an adequate sentence. Statistics compiled by the Executive Office for U.S. Attorneys indicate that during Fiscal Year 1985, thirteen defendants were charged as armed career criminals in nine separate indictments or informations. In that period, eleven defendants were convicted under the statute as armed career criminals. 1/

S. 2312 would expand the coverage of the Act by broadening the class of predicate crimes that make an armed person a career criminal. It would amend 18 U.S.C. App. 1202 so that it would provide for a fifteen year mandatory minimum sentence -- without

probation, parole, or a suspension of the sentence -- for persons who have three prior convictions for a "crime of violence" or for a "serious drug offense" or both -- for example two convictions for a crime of violence and one for a serious drug offense. Both the terms "crime of violence" and "serious drug offense" are defined in the bill. 2/ The term "crime of violence" would include robberies and burglaries since both are felonies that "by [their] nature [involve] a substantial risk that physical force against the person or property of another may be used in the course of committing [them]."

We support this expanded coverage of the Act. Persons who have been convicted of, for example, two rapes and an assault with a dangerous weapon are every bit as dangerous (and have shown that they are as much of a "career" criminal) as a person who has been convicted of two burglaries and a robbery.

We realize that a broadening of the Act in the fashion of S. 2312 poses an issue with regard to whether the federal government could be said to be intruding into areas of the criminal justice system traditionally the province of the states. However, the purpose of the Armed Career Criminal Act, and its effect on the basis of our experience with the Act to date, is to assist the states, not usurp their authority. We are confident that with careful coordination between state and federal prosecutors through the Law Enforcement Coordinating Committees and other means, we can make effective use of both federal and state resources against career criminals and thereby enhance public safety for all our citizens. Such coordination is already taking place in many judicial districts around the country with respect to career robbers and burglars under the existing Act, and there is every reason to believe we can duplicate this cooperative effort in dealing with such dangerous persons as armed recidivist rapists, murderers, and drug dealers.

We are also aware that expanding the Act has the potential for creating some impact on the federal prison system. Obviously, space must be found to house persons serving fifteen-year or longer sentences. There is, however, in our view no reason to

fear that enactment of this legislation will result in prison overcrowding. The present statute has not caused a problem in the federal prison system. In order to violate the Act, the defendant must be committing an offense which is already federal by definition even without the presence of the prior convictions. Certainly discretion will be used in utilizing the Act. Moreover, even where the offense, without the priors, would normally be prosecuted in state court, the broadening of the Act is unlikely to result in pressure for more federal prosecutions in every state. Some states have habitual offender statutes that are as tough as, or tougher than, the federal statute. For example, New York's career criminal statute requires only two previous convictions, rather than three. 3/

We do have a technical suggestion with regard to the definition of the term "serious drug offense." We think that it should include an offense for which a maximum term of imprisonment of ten years or more is prescribed in "the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.)" as well as in the two Acts cited in the definition quoted in footnote 2, in order to cover persons whose drug convictions have involved drug importation or exportation.

In conclusion, Mr. Chairman, let me say once again that the Department supports this bill. I would be happy to answer any questions at this time.

FOOTNOTES

1/ "The First Year Under the Comprehensive Crime Control Act of 1984, P.L. 98-473," A Summary of Major Activities of the United States Department of Justice from October 12, 1984 through October 30, 1985, pp. 64-65. Statistics for Fiscal Year 1986 are not yet available from the Executive Office, but according to the Bureau of Prisons as of May 8, 1986, there were fourteen persons serving sentences as armed career criminals.

2/ The term "crime of violence" is defined as it is in 18 U.S.C. 16:

> "(A) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or
>
> "(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in committing the offense."

The term "serious drug offense" is defined as:

> "an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 951 et seq.) or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)."

It is necessary to separately enumerate serious drug offenses in order to make them predicate crimes because courts have generally held that serious drug offenses are not included in the term "crime of violence" as it is used in 18 U.S.C. 16. See, e.g., United States v. Diaz, 778 F.2d 86 (2d Cir. 1985).

3/ N.Y. Penal Law §70.10.

Senator SPECTER. Welcome, Mr. Dennis. We salute you on your outstanding work and welcome you here.

STATEMENT OF EDWARD S.G. DENNIS, JR.

Mr. DENNIS. Well, thank you very much. It is certainly an honor to be asked to testify this morning. Mr. Chairman, I want to speak to two issues that have been raised this morning. The first is I want to make it clear that our experience in Philadelphia has proven beyond any doubt in my mind that the Armed Career Criminal Act and predecessor statutes to it have in no way caused any friction between the U.S. attorneys' offices or the local district attorneys.

If anything, I think it has drawn us closer together in a cooperative effort to try to deal as effectively as we can with armed career criminals

In that vein, I am sure you are aware that we have had a serious drug trafficking problem in certain areas of Philadelphia that has become so blatant and open that it has been a cause of major concern to public officials there.

In an effort to try to stem that, the DA in Philadelphia, Ron Castille, and I have formed a neighborhood drug task force to investigate that drug trafficking. But as a part of that task force, we do have assigned from the Bureau of Alcohol, Tobacco and Firearms an agent on a full-time basis, and one of his duties will be to determine whether or not there are defendants who have been arrested in that project that would qualify under the Armed Career Criminal Act.

I would say that certainly the act, as it would be expanded under the current bill, would certainly be much more helpful because it is not limited to the burglary or the robbery convictions.

We feel that it is absolutely essential that we have this as a tool to be able to deal effectively with drug traffickers and other criminals engaged in potentially violent conduct.

As you know, in that area, we have had a number of young people who have been assaulted, one young man murdered, in the drug trafficking situation in that area.

The other point that I wanted to make was the fact that we believe that this is effective not just in terms of the statistics insofar as sentences are concerned in the Federal system, but as you have pointed out, the fact that it can be used as leverage in plea bargaining on the State and local level with defendants who would be subject to conviction and sentencing under this act.

I do not want to speak for——

Senator SPECTER. Mr. Dennis, I am glad to hear you mention the leveraging feature, and I would be interested in your experience with it. We have the distinguished district attorney from Philadelphia here, Mr. Castille, who will be able to address this as well, but if you could amplify whatever experience you have had on the leveraging benefit—for those who do not know what we mean, this is a term which Mr. Dennis and I have used before.

Going back to my days as district attorney of Philadelphia, I recall a category of career criminals in the range of some 500, participating in an enormous amount of judge-shopping. Career crimi-

nals would move through the system, finally find a lenient judge, and receive merely a slap on the wrist.

What we had hoped for, and are on the way, I think, is a situation where, say, the Philadelphia DA, for illustrative purposes, might refer five cases to the U.S. attorney where the speedy trial rule applies—trial within 90 days, individual calendar, no shopping, and the mandatory sentence of 15 years to life.

Then the other 495 would not know who was next, and that would set up a series of incentives for guilty pleas. In the common pleas courts of Philadelphia, the sentences still might not be too good or too bad, but they might bring 5 to 10 years, or 8 to 16, something in that range.

So with that brief analogy, Mr. Dennis, I would be interested to hear what you feel has happened or what may happen with this amendment on the leveraging issue.

Mr. DENNIS. Well, I do not want to speak for District Attorney Castille; I know he will cover this. But I do know that there have been a number of cases, and one case, in particular, in which a very appropriate plea bargain was reached as a direct result of the threat of the case being referred to Federal court, with, of course, the mandatory jail sentence possibly imposed of 15 years in the Federal system.

It is just a matter of common sense that when that threat is real, when, with our detention statute, the fact that a defendant would be placed in custody and detained under the Bail Reform Act immediately upon arrest, usually because the record would warrant that, and would face a probable sentence of 15 years, mandatory, that is an extreme amount of leverage in the plea bargaining situation, and I think that District Attorney Castille will address that more specifically, but it does appear to be operating in that fashion.

In conclusion, Mr. Chairman, we are very pleased with the way in which the cooperative relationship between the DAs' offices and our office is working in this area. We think it is a very worthwhile piece of legislation and we encourage the prompt passage of this legislation.

Senator SPECTER. Thank you, Mr Dennis.

Mr. KNAPP. Mr. diGenova.

Mr. DIGENOVA. Thank you.

Senator SPECTER. Welcome, Mr. diGenova. It is very nice to have you here again.

STATEMENT OF JOSEPH E. diGENOVA

Mr. DIGENOVA. I am delighted to be here, sir.

Let me echo Ed Dennis' comments, Mr. Chairman, to congratulate you on what I consider to be not only a good piece of legislation, but an intelligently crafted and thought-out piece of legislation, which obviously was targeted at dealing with individuals who pose a problem to the community as a whole and appropriately uses in a measured way the resources of the Federal Government to deal with them in a cooperative relationship with the States.

Senator SPECTER. Have you had any problems with your local prosecutor, Mr. diGenova?

Mr. DIGENOVA. Mr. Chairman, I can say without a doubt that I have not had a single argument with the local prosecutor over the enforcement of this particular statute. In fact, I have indeed spoken to him regularly about this and we have had no problems whatsoever.

Mr. Chairman, I think the expansion, however, of the predicate offense base is vital. As you know, we have been in regular contact with you over the last year through a project which we started to review all of the cases coming into the Superior Court of the District of Columbia.

We have attempted to rigorously scrutinize arrestees. We had some 26,000 cases come into superior court last year. They were reviewed pursuant to strict guidelines which I set up to seek cases which would qualify under the Armed Career Criminal Act.

As a result, in 1985 we found one case; that was Mr. Horace Graydon, who was subsequently sentenced in Federal court to 35 years in prison. We had another gentleman convicted, Mr. Jackson, who received a 20-year sentence. We now have a third case pending in U.S. district court at this time, pending trial.

Considering the review which we undertook and the screening mechanisms which we devised, we have become convinced, as Mr. Knapp indicated in his testimony, that the expansion of the predicate offenses is vital to reach a greater number of those individuals who should qualify for this type of treatment because of their historic involvement, consciously choosing a career of crime either of an assaultive nature, a murderous nature, or a drug-related nature.

Many, many individuals who have come through the screening have had various prior convictions of felonies for serious drug offenses or serious assaults or homicides, but it has been difficult to come up with three prior burglaries and robberies

Of course, that other conduct which I have outlined is violent in nature and dangerous, and I underscore the word "dangerous," which is an additionally, I think, important descriptive word which should be included.

At any rate, we obviously, in conjunction with the Department, wholeheartedly support the expansion of the definition of the crimes to be included and would be delighted to use it as much as we could, given the opportunity to do so.

Senator SPECTER. Thank you very much, Mr. diGenova.

Mr. DIGENOVA. Thank you, sir

Senator SPECTER. We now turn to Mr. West, and I thank you, Mr. West, for your assistance in bringing this bill to the attention of prosecuting attorneys in your area.

I might say that Mr. Dennis and Mr. Castille and I have worked jointly on the matter, and that I have held hearings on the career criminal bill in many cities in the United States to try to focus the attention of local prosecutors and U.S. attorneys on this issue.

Hearings have been held in New York City, the Southern District; Miami, FL; Dallas, TX; Los Angeles; San Francisco, all in an effort to bring this process to the attention of prosecuting attorneys.

You and I have held a meeting in Harrisburg with prosecutors from central Pennsylvania, and Mr. West and I have held a meeting in Scranton with prosecutors from the northeastern part of

Pennsylvania, in an effort to make this procedure known and to stimulate its use.

So I thank you for that cooperation and welcome you here today, Mr. West.

STATEMENT OF JAMES J. WEST

Mr. WEST. Thank you very much, Senator. I would point out that while I have attempted to make this bill known to the prosecutors in the Middle District of Pennsylvania, it was already known to them when I contacted them through my predecessor, David Dart Queen, who was the U.S. attorney there, and through correspondence with your office and members of your staff.

I believe the district attorneys have been contacted and that you have really led the charge insofar as making sure that the word got out on this particular piece of legislation.

As you are aware, the Middle District of Pennsylvania is basically a rural district, with only two large population centers, which would be the Scranton and Harrisburg areas, which in no way could compare to Philadelphia and Pittsburgh.

But, nevertheless, the Armed Career Criminal Act has found good and appropriate use within the middle district. One of the local DA's that you contacted back in the beginning and that was followed up with continued contacts through the law enforcement coordinating committee has been successful, through the leverage effect that you and U.S. attorney Dennis mentioned, in developing a very substantial drug informant.

I cannot go into the background of it, but he has informed me that that informant was developed based on the ability to inform him of the provisions of the Career Criminal Act and the fact his case was about to be referred to the U.S. attorney's office for prosecution. That case has been developing and continues to develop.

The reaction of local prosecutors has been very good to the Armed Career Criminal Act and, in addition, there has been one charge filed in the middle district against an individual who attempted to send a bomb through the mail to blow up his neighbors. When he was arrested, it was discovered that he had a large cache of guns—I believe 12 guns and small firearms—and that also he was a five-time convicted burglar. The provisions of the act have been brought to bear on that particular individual, a Mr. Wiser.

The expansion of the act can do nothing but good insofar as prosecutors are concerned, at least insofar as the Middle District of Pennsylvania is concerned. I would point out that I did become aware in some light reading that there have been some recent studies done by the University of Pennsylvania and by the Rand Corp. that indicate that there is a phenomenon of the armed career criminal and that there are individuals who are in the category of superfelons.

I believe the Rand Corp. study, which was cited in a Reader's Digest article in this month's edition, indicated that their poll of prisoners showed that burglars, on an average—50 percent of them would commit three to four burglaries a year. The top 10 percent burglars would commit an average of 230 burglaries a year. [Read-

er's Digest, May 1986, "The Proven Key To Crime Control", pp. 97–99, Eugene H. Methvin.]

Accordingly, by putting one of these superfelons away, it is the same as putting 40 of the run-of-the-mill 50 percent burglars away.

In reading that particular article, it seemed to me that it was aimed directly at the type of legislation that is here, the Armed Career Criminal Act, and that this particular statute and the expansion of it can have a very good effect on law enforcement, and certainly is endorsed by the U.S. attorney's office and the prosecutors in the middle district that you have mentioned.

Thank you, Senator.

Senator SPECTER. Thank you very much, Mr. West. I am interested in your category of superfelons. Maybe we ought to retitle this the supercareer criminals bill in its amended form.

When we had hearings on the armed career criminal bill in 1981, 1982, 1983, and 1984, the testimony from across the country—and we have very extensive hearings at that time on the base bill—was that there are approximately 200,000 to 400,000 career criminals in the country. It is very hard to be specific

I have long been convinced that if we could put 200,000 career criminals in jail in this country, we could reduce violent crime by 50 percent. That was a conclusion of the National Commission on Criminal Justice Standards and Goals which filed its report more than a decade ago back in 1973.

Well, gentlemen, we very much appreciate your testimony; it is right to the point. This is probably the fastest hearing on a major bill in history; certainly, the fastest one that I have been a party to in the Judiciary Committee.

So we thank you very much.

Mr. KNAPP. Thank you very much, Senator.

Mr. DIGENOVA. Thank you, sir.

Senator SPECTER. I would like now to call the Deputy Assistant Secretary of the U.S. Department of Treasury, David Dart Queen. Mr. Queen had served as U.S. attorney for the Middle District of Pennsylvania.

We welcome you here, Mr. Queen, and look forward to your testimony.

STATEMENT OF DAVID DART QUEEN, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY

Mr. QUEEN. Thank you, Senator. I will try to be brief.

I appreciate the opportunity to discuss S. 2312 with you, particularly in the now departing company of this distinguished group of U.S. attorneys

The Comprehensive Crime Control Act of 1984 contained some of the most significant changes in the Federal criminal justice system enacted at one time. Tremendous muscle was added to law enforcement efforts to curb the violent and habitual criminal.

Among the most powerful sections of that 1984 statute was that dealing with the armed career criminal, mandating 15-year sentences for habitual armed robbers and burglars. This section is showing signs of becoming a cornerstone on which State and Feder-

al officials are building a cooperative effort to put the habitual criminal out of business.

Congress recently enacted firearms legislation that included the extension of increased penalties under 18 U.S.C. 924(c), the so-called felon in possession, to cover drug trafficking crimes.

Section 924(c) mandates enhanced sentences for those using firearms "during and in relation to any crime of violence or drug trafficking," which is a Federal offense. In so doing, it strikes at the criminal caught in the act.

But except for armed robbers and burglars, the same level of deterrence does not exist for other violent criminals or drug traffickers who have armed themselves to continue a proven career of crime.

Now, Senator, your proposed legislation recognizes this gap and would close it by amending the Armed Career Criminal Act to include the recidivist drug trafficker or violent criminal, regardless of whether his prior offense were prosecuted at the State or local level.

S. 2312 is an important piece of legislation which applies a logical, commonsense definition of violence. We cannot limit our efforts against violence to just the burglar and the robber. The same message must go out to the rapist, the gangland enforcer, or to any professional violent offender. They earn their records, and the last thing we need is for them to be armed.

Your bill is a much needed and timely dose of preventive medicine. In November, the dangerous special offender statute will expire. Since it will be superseded by the Armed Career Criminal Act, I believe that broadening the ACCA with your amendment will give us a tool with much of the scope of the earlier Dangerous Special Offender Act, and with a much greater visibility and application.

Senator SPECTER. Mr. Queen, what specific provision will expire, as you just stated?

Mr. QUEEN. That is the Armed Career Criminal Act. It expires, I think, in November.

Senator SPECTER. Well, the——

Mr. QUEEN. I am sorry; Special Dangerous Offender Act.

Senator SPECTER. Special Dangerous Offender Act?

Mr. QUEEN. Yes. Actually, the title is "The Dangerous Special Offender Statute."

Senator SPECTER. Well, what category of offender does that cover?

Mr. QUEEN. Well, it covers a whole classification of individuals that are, in fact, going to be covered by your proposed statute. I can get you the specific details if you would like.

Senator SPECTER. I had not been familiar with the expiration of that provision. Why is it on the books to expire?

Mr. QUEEN. Senator, I am not certain of the answer, but I will certainly if I can——

Senator SPECTER. Well, I do not think we had in mind when we enacted the armed career criminal bill that it would pick up this other statute, at least not to my knowledge.

Mr. QUEEN. I believe it was not so much intended to, but will have the effect of doing just that.

Senator SPECTER. I see, all right. Well, we will take a look at that.

Mr. QUEEN. But I will make a note and follow up and get you that additional information.

Senator SPECTER. All right, thank you.

Mr. QUEEN. The Bureau of Alcohol, Tobacco and Firearms is charged with the enforcement of Federal firearms laws, as you well know. Their efforts are wholeheartedly directed toward capturing major offenders and violent criminals who unlawfully arm themselves.

Since the passage of the Armed Career Criminal Act in October 1984, ATF has been instrumental in indicting 84 suspects, and has obtained 40 convictions. An additional 23 suspects have been indicted and 12 convictions obtained under section 924(c) that I mentioned earlier.

A review of 48 of those defendants shows they had a combined total of more than 250 felony convictions.

Senator SPECTER. Would you repeat those statistics, please, Mr. Queen?

Mr. QUEEN. Sure. Now, this is between October 1984 and May 1986. Cases covered under the current provision of the law resulted in 84 indictments in which the ATF participated.

Senator SPECTER. That is the armed career criminal bill?

Mr. QUEEN. Correct.

Senator SPECTER. Thank you.

Mr. QUEEN. Forty convictions have been obtained. An additional 23 cases have been—that is not to imply that these have been 44 acquittals; that is just the 40 that have gone to completion.

An additional 23 cases were indicted and 12 convictions obtained under 924(c), which I mentioned earlier. As I mentioned, 48 of the defendants covered in that category represented 250 felony convictions.

Three pilot task forces set up by ATF in Detroit, St. Louis, and New Orleans have focused the ACCA and other statutes on dangerous criminals. By March, for this fiscal year alone, a total of 35 of the most dangerous criminals in those three cities were identified, and the efforts of ATF are growing.

Consider, however, the potential. In fiscal year 1985, ATF recommended 3,137 defendants for prosecution for firearms violations. Of these, 1,696 or 54 percent of the defendants, had prior felony convictions; 909 had histories of violence, and 236 were DEA class I or class II violators; 956 were otherwise identified as narcotics violators.

It does not take a lot of imagination to envision the impact if even a few of these offenders had been subject to the 15-year mandatory penalty which your amendment would bring them under the coverage of.

I might add, going beyond the prepared text that I have, the felon in possession, which is essentially what we are talking about—it is simply an enhanced penalty for a felon-in-possession type of violation—is from a prosecutor's viewpoint, and generally from an investigative standpoint, an extremely cost-effective type of prosecution.

It has been my personal experience, and I think ATF would back me up here, that they are in many respects not complex cases. That is not to say that they are necessarily easy to make, but from a prosecution standpoint they are not very time consuming.

As a consequence, the kind of conviction or the trial necessary, if it had to go to trial, is not anything like some of the more complex cases. With the enhanced penalty provision, to use business terms, it becomes a very cost-effective method of prosecution.

Senator SPECTER. Mr Queen, I would like to interrupt you at this point.

Mr. QUEEN. Well, I was finished anyway.

Senator SPECTER. Well, no, you are not quite finished. I have a few questions.

We have a vote on right now and I am going to go to the vote and I will return in just a few moments to ask you some questions, because I think that enforcement by your unit is really very important, and I would like to pursue that with you for a bit.

Mr. QUEEN. I will try to get the answers to a couple of your questions.

Senator SPECTER. That would be fine. Thank you.

[A brief recess was taken.]

Senator SPECTER. Thank you for waiting, Mr. Queen.

Mr. QUEEN. I was able during the time you were voting, Senator, to firm up some of the details, because I did not want to rely on my recollection

Senator SPECTER. Good.

Mr. QUEEN. The increased sentence provision for the dangerous special offenders contained in section 3575 of title 18, United States Code, was repealed by Public Law 98-473, title II, C. II, and 212(a), October 12, 1984, statute 1987 which is referred to as the Comprehensive Crime Control Act [CCCA] of 1984. The effective date is November 1, 1986.

The basic provisions of the act are that it requires two prior felony convictions, at least one of which occurred in the preceding 5-year period of time. Essentially, what it would require is that following a third conviction, and with the prior consent of the Department of Justice, the U.S. attorney would, in effect, petition the court to declare the convicted defendant a dangerous special offender, applying certain types of criteria.

Senator SPECTER. I am surprised that it had an expiration date. I am not familiar with sunsetting on criminal law provisions.

Mr. QUEEN. I could not tell you why that is, but there are a number of——

Senator SPECTER. But the Career Criminal Act has come to the rescue, anyway?

Mr. QUEEN. Well, if it passes, it really has several advantages because in addition to those that I mentioned, the 25-year enhancement had no mandatory floor on it, so that you did not necessarily assure, after all that difficulty, that you were going to get a dramatic increase in the penalty.

So the proposal that you are talking about really has several advantages. It assures a uniform minimum standard for these types of people. It obviously improves some of the definitions.

It eliminates the bureaucratic problem that would result from having to go up and down the justice ladder, and I think, on balance, would really be a desirable replacement. Obviously, you would not want to lose the dangerous special offender and then have nothing to replace it with. That would be undesirable.

Senator SPECTER. Well, what you have brought to our attention here this morning, Mr. Queen, is an added good reason for passage of this bill. And you say the expiration date is November——

Mr. QUEEN. November 1986.

Senator SPECTER. November 1986; a propitious month, too.

Mr. QUEEN. Yes, yes.

Senator SPECTER. Any special date in November?

Mr. QUEEN. The first Tuesday following the first——

Senator SPECTER. The first Tuesday after the first Monday.

The one question that I wanted to pursue with you beyond these, Mr. Queen, is the subject of resources of your unit to help out in enforcement, because your agency is the agency that deals with guns.

I understand that there has been a very successful prosecution program in St. Louis, MO, which has been implemented because of very substantial work by your group. My question to you is how much can your unit do on a nationwide basis in moving against people who illegally carry guns.

Mr. QUEEN. You are correct. The Bureau of Alcohol, Tobacco and Firearms started, I suppose you would call it, a test program under the cooperative efforts of Mr. Ditmeyer, the U.S. attorney in St. Louis, who enjoys an excellent relationship with local law enforcement.

I think you can only describe that program as an unqualified success. They have——

Senator SPECTER. They have brought a great many cases, as I understand it.

Mr. QUEEN. They have. I did not break them out. The three cities that I mentioned we clumped together, but St. Louis represents a substantial portion through its task force arrangement, where ATF has committed a relatively modest amount of resources compared to what they are getting in return.

The locals, really, across the board from the city, the county, and the State have been extremely cooperative and very enthusiastic

Senator SPECTER. What I understand they have done is applied the manpower and have actually put under surveillance career criminals who are suspected of carrying guns or career criminals who are likely to carry guns, because that is what career criminals do. Then they have apprehended these people.

And instead of waiting for the local police to bring the cases to the DA, who in turn brings them to the U S. attorney, there has been that affirmative action, so to speak.

Mr. QUEEN. They have been very proactive. What has made it possible, of course, is the statute, which is the incentive. But the local law enforcement people are very sensitive and very tuned to the kind of people, and in many instances can literally tell you when you walk in and say, is there somebody you know who is a constant source of violating the laws, and they can list names for you.

Senator SPECTER. Well, what I would like you to do, Mr. Queen, is to followup, if you would, by giving this committee some sort of a battle plan that ATF might undertake and that they might use on a nationwide basis to implement the act.

As you know, I serve on the Appropriations Committee and I could not attend that hearing where we went into the budgetary considerations, but it may be that we can target some special resources.

If you would include in your presentation the expiration of the Dangerous Criminal Act that you referred to, I think, in combination, the Judiciary Committee and the Appropriations Committee may be able to do some targeting here which could use the St. Louis experience in a very meaningful way.

Mr. QUEEN. I will be glad to do that, Senator.

Senator SPECTER. Well, if you can do that in the course of the next 2 or 3 weeks, we can get it in markup and, I think, do some good on this very central problem.

Mr. QUEEN. One thing that I would mention that was not included in the testimony—and I only offer this as food for thought and I do not pretend to be an expert in the area, but one thing that your staff may wish to look at, and maybe Justice would be the people to examine it for you in detail, is that an unfortunately large collection of individuals who classify as juvenile offenders—it is obviously no news to you that there are an enormous number of very dangerous young people committing offenses.

It may be desirable, and I emphasize the word "may," to clarify in your proposed legislation that a juvenile offense, perhaps within a certain age group, would be admissible to constitute a predicate for the purpose of a conviction under the statute by an adult.

The example I can think of is, say, someone who is 20 years old who has several felony convictions prior to his 18th birthday that would otherwise classify as predicates, but could be knocked out by the courts for consideration in the enhanced penalty phase. I merely raise that as an observation.

Senator SPECTER. That is an interesting possibility. It would stir a hornet's nest.

Mr. QUEEN. That is why I used the word "may."

Senator SPECTER. Well, it is something which is worth considering. You really have to take these things a step at a time. The first time around, we could not get very much; we could not get anything beyond robberies and burglaries.

If we get this statute and if we hold hearings on the juvenile issue, I think there would have to be some safeguards, maybe some age constraint—maybe 17 years of age or 16 years of age, or some limiting factor. But that would require a very careful analysis.

We would have to include in the hearing process a very different array of expertise than we have so far.

We are hopeful of getting this on a fast track and getting it passed in advance of——

Mr. QUEEN. Well, I will, upon my return to the office, set in motion the preparation of the response that you have requested.

Senator SPECTER. Well, that would be very helpful. As I say, we are hopeful of getting it passed very promptly because of the real unanimity that exists on it at the moment.

So thank you very much, Mr. Queen.
Mr. QUEEN. Thank you, Senator.
[The prepared statement and requested material follow:]

PREPARED STATEMENT OF DAVID DART QUEEN

Senator Laxalt, members of the Subcommittee:

I appreciate this opportunity to discuss S. 2312 with you, particularly in the company of this distinguished group of United States Attorneys.

The Comprehensive Crime Control Act of 1984, contained some of the most significant changes in the Federal criminal justice system enacted at one time. Tremendous muscle was added to law enforcement efforts to curb the violent and habitual criminal.

Among the most powerful sections of that 1984 statute was that dealing with the armed career criminal. Mandating 15-year sentences for habitual armed robbers and burglars, this section is showing signs of becoming a cornerstone on which State and Federal officials are building a cooperative effort to put the habitual criminal out of business.

Congress recently acted on firearms legislation that included the extension of increased penalties under 18 USC 924(c) to cover drug trafficking crimes.

Section 924(c) mandates enhanced sentences for those using firearms "during and in relation to any crime of violence or drug trafficking," which is a Federal offense. In doing so, it strikes at the criminal "caught in the act". But except for armed robbers and burglars, the same level of deterrence does not exist for other violent criminals or drug traffickers who have armed themselves to continue a proven career of crime.

Senator Specter's proposed legislation recognizes this gap and would close it by amending the Armed Career Criminal Act to include the recidivist drug trafficker or violent criminal - regardless of whether his prior offenses were prosecuted at the State or Federal level.

S. 2312 is an important piece of legislation which applies a logical, common sense definition of violence. We cannot limit our efforts against violence to just the burglar and robber. Why not the same message to the rapist, the gangland enforcer, to any professional, violent offender? They earned their records and the last thing we need is for them to be armed. Senator Specter's bill is a much needed and timely dose of preventive medicine. In November, the Dangerous Special Offender Statute will expire. Since it will be superseded by the Armed Career Criminal Act, I believe that broadening the ACCA with Senator Specter's amendment will give us a tool with much of the scope of the earlier Dangerous Special Offender Act and with much greater visibility and application.

The Bureau of Alcohol, Tobacco and Firearms is charged with enforcement of the Federal firearms laws. Its efforts are wholeheartedly directed toward capturing the major offender and violent criminals who unlawfully arm themselves.

Between October, 1985 and March, 1986, ATF has indicted 60 cases and had already obtained 22 convictions. An additional 17 cases were indicted, and 8 convictions obtained under Section 924(c). A close review of 48 of these defendants showed they had a combined total of more than 250 felony convictions.

Three pilot task forces set up by ATF in Detroit, St. Louis, and New Orleans have focused the ACCA and other statutes on dangerous criminals. By March, for this fiscal year alone, a total of 35 of the most dangerous criminals in those three cities were identified, and the efforts of ATF are growing.

Consider however, the potential. In fiscal year 1985, ATF recommended 3,137 defendants for prosecution for firearms violations. Of these, 1,696 or 54 percent of the defendants had prior felony records; 909 had histories of violence; 236 were DEA Class I or II violators; and 956 were otherwise identified as narcotics violators. Envision the impact if even a few of these offenders had been subject to a 15-year mandatory penalty.

DEPARTMENT OF THE TREASURY
WASHINGTON

JUN 05 1986

Dear Senator Specter:

This letter is to provide the information that you requested during recent hearings regarding proposed amendments to the Armed Career Criminal Act of 1984 (ACCA). You asked me to address three matters: (a) the impending expiration of the Dangerous Special Offender Act, (b) our experience with the current Armed Career Criminal Act, and (c) the resources required for expanding the program to other cities.

(a) Dangerous Special Offenders Act

The Dangerous Special Offenders Act, 18 U.S.C. Section 3575, expires November 1, 1986. The Act contains its own expiration date. The Act was created to provide a more effective sentencing procedure for habitual offenders. Enclosure Number 1 explains the Dangerous Special Offenders Act in detail. Expiration of the Act will create a gap in the Federal law enforcement movement to remove habitual offenders for significant periods of time.

(b) The Armed Career Criminal Act of 1984

As you are aware, the ACCA was enacted in October 1984. The legislative intent of this Act was to provide enhanced Federal penalties in efforts to curb armed, habitual (career) criminals. The enforcement of the Gun Control Act of 1968 (GCA) is vested in the Secretary of the Treasury, and the ACCA of 1984 amended and enhances this responsibility in three ways:

1. Addition to Chapter 44 of a new Section 929, "Use of Restricted Ammunition." Section 929 mandates enhanced punishment for persons who commit crimes of violence while carrying a handgun loaded with armor-piercing ammunition. The penalty is 5 years' imprisonment that cannot be served concurrently with any other sentence, cannot be suspended, and the defendant cannot be given probation or be paroled.

2. Amendment to 18 U.S.C. Section 924(c) to require imposition of a mandatory penalty, with no possibility of parole or probation, for a person who uses or carries a firearm during, and in relation to, a Federal crime of violence. A first conviction mandates a 5 year prison sentence, subsequent convictions mandate 10 years in prison.

3. Enhanced penalties to 18 U.S.C. Appendix 1202, for persons who are convicted of possessing firearms and who have three previous Federal or State convictions for robbery or burglary. This statute mandates imprisonment of not less than 15 years, no suspended sentence, no parole or probation, and a fine of up to $25,000.

62-982 0 - 86 - 2

In FY 1985, the Bureau of Alcohol, Tobacco & Firearms implemented career criminal projects in three cities using the ACCA. These projects were joint efforts of the U.S. Attorneys offices, state prosecutors, and state and local investigators. ATF's proactive approach involved identifying and targeting suspects who meet the criteria for enhanced sentencing if convicted for a violation of 18 U.S.C. Appendix 1202. The task force utilize undercover investigations, mobile and visual surveillance, confidential informants, electronic surveillance, and the records of Federal firearms dealers. Implementation of the projects required the redirection of resources from other high priority areas, including bombing and arson investigations. As a result, these projects could only be carried out on a limited, experimental basis.

Within 1 year, utilizing very limited resources, 78 defendants were recommended for prosecution. 48 of these defendants had a combined total of 250 prior felony convictions.

Studies by the Rand Corporation of Santa Monica, California, Professor Marvin Wolfgang of the University of Pennsylvania, and surveys within the California Prison System have revealed similar and striking profiles of a career criminal. The studies have indicated that 100 typical offenders will have committed 490 armed robberies, 720 burglaries, and approximately 4,000 other serious crimes. Yet another study contends that 200 career criminals would commit 179,000 criminal offenses in a 5 year period. Another study examined 243 narcotics addicts, and concluded that, on the average, each narcotics addict commits nearly 250 crimes per year.

Enclosed for your information is a report on drug/narcotics related violence during the period from January 1980 through March 1985. This report was prepared by ATF's Intelligence Branch and it is marked Enclosure Number 2.

Your proposed amendments to the ACCA expand the types of previous convictions which trigger the enhanced penalty. Naturally, even more cases could have been made if your proposed amendments had been in effect in past years. Enclosure Number 3 contains examples.

(c) Expansion of ACCA Task Forces

To establish Career Criminal Task Forces full-time in ten key cities would require approximately 100 additional special agents. ATF already has existing offices at all the required locations to implement the plan. The estimate is based on limiting the Task Forces to selected metropolitan areas which have local law enforcement agencies interested in participation. Each task force would identify, for investigative emphasis, the armed career criminals posing the greatest threat to the community and who are also subject to the enhanced penalty provisions of the new law.

ATF estimates that approximately 1,200 investigations could be initiated in the first full year of operation, resulting in 400 armed, habitual (career) criminal suspects recommended for prosecution. The estimate takes into account the expanded jurisdiction which result under your amendments.

ATF could identify task force cities and hire special agents by October 1987. By December 1987, ATF could begin training special agents and complete training by June 1989. This concept will require an additional 100 staff years by fiscal years 1988-1992. The costs are projected as follows:

FY-88	$ 7.422 million
FY-89	$ 7.596 million
FY-90	$ 7.749 million
FY-91	$ 7.874 million
FY-92	$ 8.002 million

As you know, the Administration's budget for FY 1987 does not include a request for additional agent personnel. This office is not recommending a deviation from that budget proposal, but is providing this data solely because requested to do so by the Committee.

I hope we have been responsive to your request. If we can be of further assistance, please contact us.

Sincerely,

/s/

David D. Queen
Deputy Assistant Secretary
(Law Enforcement)

Enclosure 1

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

MAR 4 1983

REFER TO
C:I:OC:JCK
3270.10

MEMORANDUM TO: All Regional Directors of Investigations
All Special Agents in Charge

FROM: Assistant Director
(Criminal Enforcement)

SUBJECT: Dangerous Special Offenders Act, 18 U.S.C. 3575

The Dangerous Special Offenders Act provides for enhanced sentencing of violators who fit the criteria set out in the statute.

This statute is being used with increasing frequency in ATF cases. The result has been stiffer sentences for offenders convicted as the result of charges brought by this agency.

Use of the provisions of this act should be encouraged whenever possible, in support of our Crime Impact Program.

In order to promote familiarity with this important law, the attached correspondence from Assistant Chief Counsel (Litigation) is forwarded for your information. Please disseminate a copy of Counsel's memorandum to each supervisor and special agent in your districts.

Phillip C. McGuire

THE DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
OFFICE OF CHIEF COUNSEL
WASHINGTON, D.C. 20226

23 FEB 1933

REFER TO CC-32,402 L:LLN

MEMORANDUM TO: Assistant Director
(Criminal Enforcement)

FROM: Assistant Chief Counsel (Litigation)

SUBJECT: Dangerous Special Offenders Act,
18 U.S.C. § 3575

This is in response to your request for a summary of 18 U.S.C. § 3575, referred to as the Dangerous Special Offenders Act. As you indicated in your request, this enhanced sentencing provision is being used with increasing frequency in ATF cases and it is the purpose of this summary to advise special agents of the general provisions of the Act so that they may alert United States Attorneys to potential candidates.

The Dangerous Special Offenders Act was enacted to provide a more effective sentencing procedure for habitual offenders. Under the Act, there are three ways in which a defendant can qualify for dangerous special offender status. First, a defendant may be a repeat offender within the meaning of 18 U.S.C. § 3575(e)(1). Second, the defendant may have committed the felony for which special offender sentencing is sought as part of a pattern of conduct which provided a substantial source of his income, and in which he manifested special skill or expertise. 18 U.S.C. § 3575(e)(2). Third, the defendant may have committed the felony for which special offender sentencing is sought in furtherance of a criminal conspiracy where the defendant played a key role. 18 U.S.C. § 3575(e)(3).

To qualify for special offender sentencing, a Federal felony defendant must have committed the felony for which special offender sentencing is sought when the defendant was over the age of 21. We turn now to a more detailed consideration of each of the three special offender categories.

Assistant Director
(Criminal Enforcement)

I. REPEAT OFFENDER

Unlike other enhancement statutes which deal with repeated crimes in specific areas of the law, e.g., 21 U.S.C. § 849 (dangerous special drug offender), the repeat offender provisions of section 3575(e)(1) place no restrictions on the nature of the felonies used to qualify the defendant for treatment under this section. However, these underlying felonies must have been punishable by death or imprisonment in excess of 1 year.

A person is a repeat offender for purposes of section 3575(e)(1) if each of the following conditions is met:

(A) The defendant has two felony convictions before the one for which special offender sentencing is sought;

(B) For one or more of these underlying felonies, the defendant must have been imprisoned prior to committing the felony for which special offender sentencing is sought; and

(C) Less than 5 years must have elapsed between the commission of the felony for which special offender sentencing is sought and the defendant's release, on parole or otherwise, from imprisonment.

Defendants have argued that their underlying felonies are too remote in time to be considered for purposes of section 3575(e)(1), where one of the underlying convictions was over 10 years old. However, there is no time limitation on the underlying felony. United States v. Williamson, 567 F.2d 610 (4th Cir. 1977). There is authority for the view that where a previous conviction of a defendant has been found invalid, it must be disregarded for purposes of enhancing a sentence pursuant to section 3575. Section 3575 also provides that a conviction for which the defendant demonstrates that he has been pardoned on the ground of innocence shall also be disregarded.

II. PROFESSIONAL CRIMINAL

A defendant is also entitled to enhanced sentencing under this section if the felony for which enhanced sentencing is sought was part of a pattern of conduct which was criminal under the laws of any jurisdiction, constituted a "substantial source of his income," and in which the defendant manifested special skill or expertise.

A. Pattern of Conduct

Under the Act, criminal conduct forms a "pattern" if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of

commission, or are otherwise related by distinguishing characteristics that are not isolated events.

B. Substantial Source of Income

The Act defines a "substantial source of income" as a source which in any period of 1 year or more exceeds the current minimum wage for a 40-hour week and a 50-week year for an employee engaged in commerce ($6700.00) or in the production of goods for commerce and which for the same period exceeds 50 percent of the defendant's declared adjusted gross income under the Internal Revenue Code. The Act also provides that in establishing eligibility for enhanced sentencing under this category, it may be demonstrated that the defendant had control of income or property not explained as being derived from other than a criminal source.

C. Special Skill or Expertise

The Act broadly defines "special skill or expertise" to include "unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplishes in such conduct, the escape from detection or apprehension for such conduct, or the disposition of the fruits or proceeds of such conduct."

We believe that many arson defendants may be eligible for enhanced sentencing under the provisions of this second category, especially when arson rings or professional torches are involved.

III. CONSPIRATOR

The final category of defendant eligible for enhanced sentencing under the Act are those defendants who have committed a felony in furtherance of a conspiracy with three or more other persons to engage in a pattern of criminal conduct where the defendant has, or agreed to, initiate, organize, plan, finance, direct, manage, or supervise all or part of the conspiracy, or has given or received a bribe or used force as a part of the criminal conduct. A "pattern" is defined as in II.A., discussed above. Again, this is a category where defendants in an arson-for-profit scheme may be eligible for enchanced sentencing.

IV. SENTENCING PROCEDURES

Once it has been established that a defendant is a special offender under one of the three categories, it must be established that the defendant is "dangerous" in order to obtain enhanced sentencing of up to 25 years. 18 U.S.C. § 3575(f). In establishing dangerousness, the court is not limited to the type of information it may consider concerning the background, character, and conduct of the defendant. 18 U.S.C. § 3577. The ordinary evidenciary safeguards which surround a formal criminal trial are not constitutionally mandated in a sentencing proceeding under section 3575. However, a court may

refuse to consider certain evidence or to give it very little weight in determining the defendant's sentence.

Before an Assistant United States Attorney (AUSA) may seek enhanced sentencing for a dangerous special offender, the AUSA must consult with and receive the approval of the Department of Justice. Once approval is received, the AUSA files a notice with the district court, but not with the presiding judge, that dangerous special offender treatment is being sought for the particular defendant. This notice must set out with particularity why the AUSA believes the defendant is a dangerous special offender. The fact that the United States is seeking dangerous special offender treatment may not be an issue at the trial and may not, without the consent of the parties, be disclosed to the jury or to the presiding judge before the defendant is found guilty or has plead guilty. In fact, if the court finds that the notice is prejudicial, it may be sealed, but it is subject to inspection by the defendant and defendant's counsel.

When a defendant has plead guilty or nolo contendre, or a verdict or finding of guilt has been entered against the defendant, the judge will hold a nonjury sentencing hearing, giving the defendant and the United States at least 10 days notice. As previously discussed, a wide range of evidence may be presented at this hearing as to why the defendant should be treated as a dangerous special offender. 18 U.S.C. § 3577. At the sentencing hearing, the defendant is entitled to be represented by counsel, may use compulsory process, and cross-examine any witnesses appearing at the hearing. Section 3575(b) provides that if it appears by a preponderance of the information presented to the court that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed 25 years and not disproportionate in severity to the maximum term for the underlying felony. The judge must enter on the record its findings and identify the information relied upon in making the findings and its reasons for imposing the enhanced sentence.

Whether a sentence is disproportionate will, of course, be determined by the particular defendant's circumstances. One example of a sentence found not to be disproportionate is presented in United States v. Williamson, supra. Williamson had been found guilty of possessing a firearm as a convicted felon in violation of 18 U.S.C. App. § 1202(a)(1). Williamson was treated as a dangerous special offender at sentencing and was sentenced to 8 years in prison instead of the 2-year maximum sentence he could have received for a violation of section 1202(a)(1). Because Williamson had a history of committing crimes of a violent nature, the Fourth Circuit held that section 3575 was enacted to protect the public from such violent repeat offenders and found that the 8-year sentence was not disproportionate.

Bradley A. Buckles

Enclosure 2

DRUG/NARCOTIC-RELATED VIOLENCE

Drug/Narcotic-related violence has reached gruesome and previously inconceivable extremes during the past four years and four months. From January, 1980 through March, 1985:

- There was the recent account of an infant that did not move on a flight from Columbia to Miami. A U.S. Customs Service check determined that the infant had been dead for some time and its body had been cut open, stuffed with cocaine and sewn shut in this trafficking effort. (The Washington Post, 3/25/85)

- There was the recent kidnapping and murder of the Drug Enforcement Administration agent and his Mexican pilot allegedly accomplished by Mexican police when Mexican's traditionally have not been murderers, except in cases of protecting ones family or personal honor, not drugs. (UPI-3/21/85)

- As recently as 1981 and 1982, Miami, Florida, was the site of machinegun battles on busy highways and in crowded shopping malls when the "Cocaine Cowboys," Colombians, waged their version of drug control wars. Since 1982, and after the formation of the South Florida Drug Task Force, the scene is now that the drug-violence victims are found in remote swamps or in car trunks. (The Washington Post-3/25/85)

- In February, 1982, a police officer was killed in a shootout in a Tucson, AZ, bar while making a cocaine bust. (UPI-11/7/84)

- 1983-1984 - There were at least 40 drug-related murders in the Oakland, CA, area over a 20-month period. (The New York Times-10/7/84)

- 7/83 - An ATF agent was shot and later died. He had been shot by a gun-running suspect who was later

jailed and charged with assaulting a Federal agent, possession of illegal explosives and cocaine conspiracy. (AP-7/13/83)

- 9/83 - A first-term Chicago, IL, alderman and former state representative was abducted at gunpoint by a West Side man who demanded $2,000 he had lost in a drug deal to a person known by the alderman. (UPI-9/10/83)

- 9/83 - Brighton Park Area Violent Crime police sergeant reported that a suspect allegedly placed two individuals in a bathtub and shot them while raiding their home with two accomplices in hopes of finding drugs and money. (UPI-4/6/84)

- 1983/1984 - Roving gangs of Rastafarians are reported to be responsible for 24 murders in the Dade County, FL, area and police reported that they are also responsible for drug rip-offs, smuggling Jamaican aliens, weapons violations, frauds, assaults, and kidnappings. (UPI-3/20/84)

- 1/84 - A Florida man was held without bail on aggravated assault and attempted murder charges for allegedly wounding a police officer and an investigator during a drug raid in Elizabeth, NJ. (UPI-1/18/84)

- 4/84 - In Colombia, drug dealers assassinated the goverment's Justice Minister who was leading a vigorous drive to halt the marijuana and cocaine pouring out of the country to the United States. (UPI-3/24/85)

- 9/84 - A man wielding a small caliber handgun burst into an apartment while an undercover policeman was working on a drug deal and was shot and killed. (UPI-11/9/84)

- 12/84 - An undercover Baltimore police officer was shot and killed while making a narcotics buy in a West Baltimore apartment building. (The Washington Post-12/4/84)

- 1984 - In Peru, drug traffickers slaughtered 19 peasants engaged in a U.S. program to uproot coca plants. (UPI-3/24/85)

- 3/85 - In Nevada, the appeal of convicted killer John Olausen was dismissed and his sentence to death upheld for the killing of a Reno police officer during a drug deal. (UPI-3/5/85)

- 3/85 - An Albanian-American drug dealer was recently sentenced to life plus 50 years in prison for importing 110 pounds of heroin into New York, killing one man and plotting, from his cell, to kill the judge and prosecutor in his case. (Reuters, Ltd-3/13/85)

- 3/85 - A Milwaukee, WI, man was arrested and charged in the deaths of two veteran police officers who were gunned down when they interrupted a drug deal. (UPI-3/21/85)

- 3/85 - A group of marijuana runners surprised Mexican police at a highway roadblock and used automatic rifles to blast away the lives of five officers, near the U.S. border. (UPI-3/24/85)

By most standards, whether one is a liberal or conservative, these are terrorist acts.

NARCOTIC DEATHS

A myriad of law enforcement agencies and other Federal offices were contacted for figures on drug/narcotic deaths. The National Institute on Drug Abuse (NIDA) was identified as the repository of drug/narcotic death statistics.

The NIDA receives information from medical examiners in 25 metropolitan areas, in the United States, relative to drug/narcotic deaths. The 1983 death figure of 2,975 reported to NIDA includes drug/narcotic overdoses, driving

accidents, etc., but exclude deaths by murder and non-negligent manslaughter.

The Uniform Crime Report (UCR) statistics presented the total number of murders as 18,673, from all types of weapons, in 1983. The UCR states that 2 percent, or 373.46 of the 18,673 murders, were directly associated to felonious narcotics activities, with 4.1 percent, or 765.59 of the 18,673, the result of arguments between individuals under the influence of alcohol and/or narcotics.

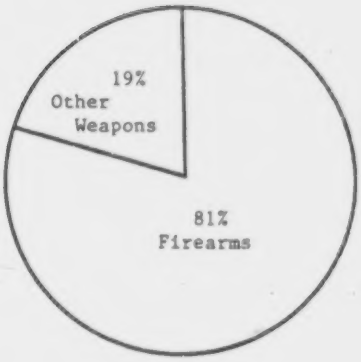
FIREARMS WITH DRUGS

The chart below states the UCR staff-generated statistics for the category of guns used in the commission of murder in combination with the violation of Federal, State and/or local narcotic drug laws.

Year	Total Guns		Firearm (Type not stated)	Handgun	Rifle	Shotgun	Other
1980	300	=	30	234	12	21	3
1981	292	=	15	243	11	23	-
1982	304	=	29	227	14	34	-
1983	299	=	28	243	9	19	-

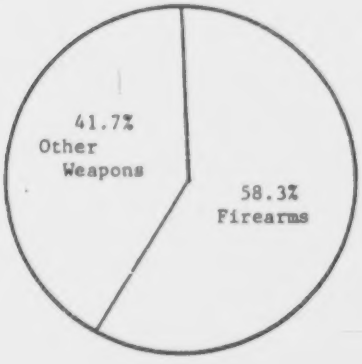
The national statistics for murder (regardless of weapon used), published in the UCR-1983 report, has steadily decreased since 1980, however the use of guns in drug-related murders, above, does not mirror the national statistics.

The figures above indicate that handguns are the weapon of choice when committing drug-related murders. Of the guns used by year, handguns were used 78% in 1980, 83% in 1981, 74% in 1982, and in 1983 they were the weapon of choice 81% of the time.



In 1983, guns were the weapon of choice in drug-/narcotic-related murders in 81% of the reported occurrences.

The use of firearms in drug/narcotic-related murders is 22.7% higher than the national average of firearms use during the commission of murder which is 58.3%.



Average use of firearms as the weapon of choice in violent crime murders nationwide.

EXCHANGE OF FIREARMS FOR DRUGS

With Mexico sharing 2,000 miles of contiguous border with the United States, and Florida with its 8,425 miles of shoreline, much of it deserted and remote, one can see the selectivity of these states as entry/exit points for the illegal operations of both the gun-runners and the drug traffickers. Florida has only 1,100 miles between its shores and Baranquilla, Colombia, making it a haven for drug traffickers and with the gun acquisition laws it is the most perfect place to buy guns to be used as protection

and illegal shipment out of the U.S. for trade or sale. There are incidents of trafficking of guns into Mexico and to areas outside the U.S. off the Florida coast being reported and investigated regularly.

The Bureau of Alcohol, Tobacco and Firearms (ATF) report of International Trafficking in Arms (ITAR) FY-1984 includes breakouts of the actual numbers of firearms traces, frequency of target countries and the frequency of ATF cases made. The report clearly identifies, in each of the three breakout categories, that the residents of the countries of Mexico and Central and South America as recipients of American firearms. Of the 68 ATF ITAR cases in 1983, 38% were Texas investigations, 19% were California investigations, and 16% were Florida investigations.

Of the 2,638 foreign requests for firearms traces, 22% of the firearms were traced to Florida, 11% traced to California, and 7% traced to Texas.

Early tracking of firearms for drug activity focused on information collected by the El Paso Intelligence Center (EPIC) in the late 1970's and early 1980's, which indicated that arms traffickers were also increasingly engaged in narcotics trafficking. The greatest number of firearms taken to Mexico being common types available through over the counter sales at stateside sporting goods stores.

However, law enforcement officials are now seeing increases in paramilitary weapons such as Colt AR-15, Ruger Mini-14, Volunteer Arms Commands .45 caliber rifles, and .30 caliber carbines. Military automatic weapons such as M-16's and M-14's have also been seized from drug traffickers. Authorities reason that arms/munitions smuggling to Mexico, Central and South America is thought to-

be a relatively low risk -- high profit business venture by the individuals involved. Firearms are generally marked up two times and more than the purchase price in the U.S. and in the past the trading of guns for drugs has meant that the trader got more drugs for his investment when trading guns rather than purchasing drugs with cash.

Paramilitary weapons are in demand in Central and South America because of the internal struggles between the reigning governments and the rebels who are constantly threatening takeover.

The incidence of trading guns for drugs in Central and South America is a less frequent occurrence than it is in Mexico. However, increasingly illegally acquired machineguns, manufactured in Florida, not only reach South America, but are being utilized, as in the assassination of a Colombian Justice Minister (UPI-3/24/85, in this report).

Law enforcement authorities continue to track the occurrence of gun trading, especially for drugs, and the general gun trafficking of one or two guns at a time by nonresidents of the U.S. and international U.S. resident travelers routinely. Violators, whether exposed through gun tracing requests to the Bureau of ATF or law enforcement investigation, will be apprehended and prosecuted whenever possible.

LAW ENFORCEMENT OFFICERS - DRUG-RELATED SHOOTINGS

The UCR-1983 states that fewer law enforcement officers in the United States were feloniously killed in the line of duty during 1983, than in any year of the past decade.

There were 80 officers slain in 1983 as compared to 92 the previous year. However, the likelihood that officers/ agents will lose their lives during the apprehension of persons on drugs, dealing or manufacturing drugs, or selling/trading drugs is increased daily with official estimates that there are about 20 million regular marijuana users in the U.S., as many as 10 million people on cocaine and 500,000 heroin addicts. Some authorities say as many as 5,000 Americans try cocaine for the first time every day. Though interdiction procedures are netting law enforcement agencies substantial seizures of the narcotics, officials estimate they only divert about a tenth of the narcotics illegally entering the United States.

CONCLUSION

Drug traffickers have already begun the crusade to stop the government with the most recent offer of $350,000 reward to persons responsible for "the head" of DEA Chief John Lawn, with the previously mentioned kidnapping and murder of a DEA agent and his Mexican pilot. They have also recently killed 12 Mexican agents, five Federal police officers near the Texas border. Authorities in the Mexican government say an average of two Mexican agents are being killed by gun wielding drug traffickers/dealers each month with 370 Mexican military, State and local officers killed in the past 5 years trying to enforce drug laws. During 1984, 70 Peruvians were killed, many of them peasants and 22 Colombian police, Customs agents and soldiers killed, and 8 Bolivian drug agents. The U.S. has had many policemen/agents killed and suspects killed by the police in the continuing drug war in recent years.

The ground between the drug source countries and the U.S. addicts is fast becoming a sea of blood from the many victims of drug-related violence. The machine-gun battles just intensify with the crackdown of government law enforcement.

The result of more stringent enforcement efforts by law enforcement agencies in the U.S. and drug capitols outside the U.S. has been an increased flow from "narcotic czars" with more determined resistance -- and more violent -- to thwart the government enforcement efforts.

Local and state law enforcement officials have reported that carrying and use of firearms by narcotic dealers is not only common, but has become standard operating procedure. U.S. cities such as Baltimore, Chicago, Dallas, Detroit, Los Angeles and New York report that narcotics trafficking is such a violent occupation that traffickers carry guns routinely. Some drug leaders employ armed body guards who carry semi-automatic weapons and automatic weapons for use as deterrents against robberies and assassination attempts of drug leaders by rival gangs. With the possession and use of firearms becoming an everyday experience, these cities could begin experiencing machinegun battles as Miami has -- and soon.

Enclosure 3

RECENT CRIMINAL INVESTIGATIONS INVOLVING
CONVICTED NARCOTICS OFFENDERS

LOCATION: Southern Judicial District of New York.

DATE INITIATED: December 11, 1984

DATE INDICTED: January 20, 1985
(18 USC 924 (c), 922 (h) (i), 21 USC 841 (a) (1)

DATE CONVICTED: July 2, 1985

SENTENCE TERMS: Five (5) years imprisonment* (924 (c))

CRIMINAL BACKGROUND OF DEFENDANT: Arrest record for possession of stolen property, and possession and sale of narcotics.

BACKGROUND OF CASE: Joint Task Force case, search warrant resulted in seizure of narcotics and firearms.

FIREARMS RECORD USED: Traces were initiated on firearms to show interstate movement.

*NOTE: Subject's conviction and mandatory sentence of five years under 18 USC 924 (c) was reversed.

RCIICNO

LOCATION: Judicial District of Puerto Rico

DATE INITIATED: September 23, 1985

DATE INDICTED: February 19, 1986 (18 USC, 924 (c), 922 (h) (i) and 21 USC, 841 (a) (i)

DATE OF CONVICTION: Pending

SENTENCE TERMS: Pending

CRIMINAL BACKGROUND OF DEFENDANT: Subject is a known Organized Crime figure and a Class I DEA offender. Subject has seven felony convictions, two for weapons violations and five involving narcotics.

BACKGROUND OF CASE: A joint investigation consisting of members from the Office of Special Investigations (P.R.), ATF, and DEA resulted in the subject's arrest for firearms and narcotics violations. At the request of ATF the Ponce Police Department established a surveillance of the subject which culminated in his arrest for possession of a firearms by a felon.

FIREARMS RECORD USED: Firearms traces initiated to show interstate movement of firearms.

LOCATION: Eastern Judicial District of Michigan

DATE INITIATED: 4/30/85

DATE INDICTED: 5/21/85 for violation of 922 (h) (1)

DATE OF CONVICTION: 1/2/86

SENTENCE TERMS: Sentenced to serve 18 months custody of the Attorney General on 2/28/86.

CRIMINAL BACKGROUND OF DEFENDANT: Defendant has three felony convictions: 1971 - murder, 1979 - attempted possession of heroin, and 1983 - larceny in a building.

BACKGROUND OF CASE: The defendant was arrested by the Michigan State Police for traffic violations and a State felony charge. The defendant was in possession of a handgun at the time of arrest. The Bureau of Alcohol, Tobacco and Firearms (ATF), at the request of the Michigan State Police, charged the defendant with Federal firearms violations.

LOCATION: Eastern Judicial District of Michigan

DATE INITIATED: 8/9/85

DATE INDICTED: Pending

DATE OF CONVICTION: Pending

SENTENCE TERMS: N/A

CRIMINAL BACKGROUND OF DEFENDANT: The defendant has four felony convictions: 2 for armed robbery in 1971 and 1976, 1 for possession of marijuana in 1967, and 1 for attempt to carry a concealed weapon, a felony.

BACKGROUND OF CASE: The defendant was arrested by the Detroit Police Department for possession of narcotics and carrying a concealed weapon. ATF 's assistance was requested and a Federal firearms case was prepared.

LOCATION: Eastern Judicial District of Michigan

DATE INITIATED: 4/9/85

DATE INDICTED: Pending

DATE OF CONVICTION: Pending

SENTENCE TERMS: N/A

CRIMINAL BACKGROUND OF DEFENDANT: Defendant has 6 felony convictions which includes 1 for attempted burglary in 1965, and 5 for narcotics violations during the years 1968 through 1982.

BACKGROUND OF CASE: The defendant was identified as a narcotics trafficker and targeted by law enforcement officials in Detroit, Michigan. On March 26, 1985, a State search warrant was executed at the defendant's residence. A quantity of narcotics and five handguns were seized pursuant to the warrant.

Senator SPECTER. The Honorable Ron Castille, district attorney of Philadelphia, accompanied by Mr. John Herron, Esq. If you would care to come forward, Mr. Herron, we would be glad to have you at the witness table.

Mr. Castille, do not think that because of the scarcity of cameras or attendees that this is any less weighty portion of the hearing. With a couple of prosecuting attorneys from Philadelphia, we may be able to accomplish a lot in this hearing room.

This may set a standard for a comment analogous to President Kennedy's famous comment about Thomas Jefferson when Kennedy, addressing a group of distinguished intelligencia in a White House dinner, in a famous remark said, there has not been so much brain power at a dinner in the White House since Jefferson dined alone.

Well, you and I—and there are a few here, and I see one noted journalist who may record our events, Mr. Mikrood, of the Harrisburg Patriot.

Mr. CASTILLE. We have the representative of the Philadelphia Inquirer here, of the Washington Bureau.

Senator SPECTER. Yes, of course. The Philadelphia Inquirer is ably represented by its new reporter, whom I have only talked to once and have not met in person, and I am looking forward to doing that.

Well, we welcome you here, District Attorney Castille, and, at the outset, commend you on doing an excellent job at one of the toughest jobs in the country, perhaps third behind only the mayor of New York City.

STATEMENT OF RONALD D. CASTILLE, DISTRICT ATTORNEY, PHILADELPHIA, PA, ON BEHALF OF THE NATIONAL DISTRICT ATTORNEY'S ASSOCIATION

Mr. CASTILLE. Thank you very much, Senator Specter, and thank you for inviting me here today. I not only represent the voters and the citizens of the great city of Philadelphia, but I am here as a representative of the National District Attorney's Association. I am a member of the Juvenile Justice Advisory Committee, and the Metropolitan Prosecutor's Committee of the National DA's Association.

Senator SPECTER. So you are speaking for the national DA's as well as for yourself?

Mr. CASTILLE. Yes, I am.

Senator SPECTER. Thank you.

Mr. CASTILLE. I am here, both as the DA of Philadelphia and as a member of the National DA's Association, to stand wholeheartedly behind S. 2312. This is the kind of effort that we feel is needed to combat the repeat, multiple, violent offender problem. And the kind of provision that we as local prosecutors have to handle the limited number of defendants who are committing an inordinant number of crimes.

I would like to relate to the committee some of the experiences I have had with our local U.S. attorney, Mr. Dennis, and some of the efforts we have made internally in the DA's office without the benefit of State legislation in our effort to prosecute career criminals.

This committee knows that the Rand Corp. did a major study which showed that a small percent of recidivist offenders commit an inordinant amount of crime. Professor Marvin Wolfgang recently completed a study of every juvenile born in the year 1956 who came into contact with the juvenile justice system over a 10-year period in Philadelphia.

His study showed that of the 30,000 juveniles who entered in the juvenile justice system, 7.5 percent of the juveniles committed 75 percent of the serious, violent offenses in the juvenile crime area.

He also made an interesting observation which we as prosecutors already knew, but was never quantified. His study showed that if a juvenile had three prior contacts with the law by the age of 14, then they had a 90-percent chance of going on to become one of the 7.5-percent we would call juvenile habitual offenders. Similar percentages apply to the adult career criminal in that 61 percent commit all crimes.

We know that these few criminals are out there committing a staggering number of crimes; and are leaving in the wake, a trail of victims who have been murdered, raped and robbed. So we are looking for alternative treatment over and above the existing system.

You, as a former district attorney of Philadelphia, know that there are many judges in Philadelphia who are more than willing to give a career criminal a break by imposing lenient terms of probation, which puts them immediately back on the street.

In an effort to attack this problem, we created a specialized career criminal unit and assigned a core group of highly experienced prosecutors to handle these cases. To qualify for career criminal prosecution, an offender must have three prior felony convictions for rape, robbery, burglary, homicide or aggravated assault with a weapon—or a combination of both. The success of this unit may also be attributed to the three tough sentencing judges assigned to the program.

[Prepared statement follows:]

Prepared Statement of Ronald D. Castille

Good morning, Mr. Chairman and members of the Committee. Intitially, I would like to express my thanks to Senator Specter and this sub-committee for extending to me an invitation to testify today. I am here to represent not only my constituents in Philadelphia but also the National District Attorney's Association of which I am an active member.

Without hesitation, I wholeheartedly support Senator Specter's amendments to the Armed Career Criminal act of 1984. The expansion of the predicate offenses to include violent crime and serious drug offenses is a critical step towards increasing our impact as prosecutors on the battle against repeat offenders of violent crime.

Mr. Chairman, as you know, I was recently elected District Attorney of Philadelphia and took office in January of this year. Although I am a newly elected prosecutor, I am quite familiar with criminal prosecution. I have served my entire legal career as an assistant district attorney in the Philadelphia District Attorney's Office. During that time I served as the Chief of the Career Criminal Unit. I am therefore, keenly aware of the complexities of career criminal prosecution and the effect these habitual offenders have had on the incidence of crime in our cities.

Studies conducted by the Rand Corporation[1.] and the Department of Justice[2.], have given us indisputable evidence

---

1. Granting Felons Probation, Public Risks and Alternatives. Petersilia, Turner, Kahan, and Peterson. Rand Corporation, 1985
2. Report to the Nation on Crime and Justice, The Data. US Dept. of Justice.

that relatively few offenders commit the majority of serious crimes in the United States. Moreover, most of these crimes are committed by offenders serving sentences on probation. Sixty five percent (65%) of probationary felons are rearrested. Of those, 51% are reconvicted. These offenders commit 60% of all homicides; 75% of all rapes; 73% of all robberies and 65% of all aggravated assaults.

To those of us in criminal justice professions, these statistics are merely numbers to study and analyze. To the victims and their families, however, the knowledge that their perpetrator is a repeat serious offender out on probation, only adds to their emotional trauma and in some cases, long term physical suffering. Although I am a seasoned prosecutor, I am deeply distressed by the staggering number of victims who have been raped, robbed or killed by offenders with extensive criminal records.

Yet, judges continue to issue lenient sentences of probation for violent crimes and the problem is compounded by the lack of response by probation departments. Through no fault of their own, funding for probation offices does not reflect their increased caseload. Therefore, probation officers no longer have the time or resources to track the rehabilitative progress of the offender. Studies have indicated that from the time a recidivist felony probationer is placed on probation to the time of his next criminal act, an average of only eight months elapses for violent offenders and five months for those who commit property crimes. It is clear that the imposition of a probationary sentence for a violent repeat offender has proven ineffective, at best.

As the members of this sub-committee are well aware, we are beginning to develop some viable alternative solutions to this problem. One such solution which has proven most effective in my

jurisidiction is presented here today. The enactment of the Armed Career Criminal bill was initially disavowed by my fellow prosecutors. Their primary concern was the discretionary power they believed they would be forced to relinquish. However, we have found that by developing cooperative relationships with local Federal prosecutors, we could maximize our severely limited resources.

Within days of taking office as District Attorney, Edward Dennis, U. S. Attorney for the Eastern District of Pennsylvania and I, entered into a cooperative effort establishing new procedures to more quickly and effectively identify cases which fit the criteria set forth by the Armed Career Criminal Act and other existing Federal criminal statutes. Under these new procedures, cases are centrally screened in the District Attorney's Pre-Trial Division. The U.S. Attorney also provides his resources and support to assist in indentifying suitable cases allowing swift prosecution under federal guidelines.

Since January, 1986, we have referred four cases which may be prosecuted under the Armed Career Criminal Act. These cases are currently under investigation by the U.S. Attorney. Some of these defendants have criminal records dating back more than twenty years! A quick glance at those cases previously referred show, among others, two defendants who have substantial criminal records involving felonies and convictions for burglary, robbery and narcotics offenses. Serving probationary sentences, these offenders have continued to prey on the innocent victims of our city. Under the present statute, becuase they have three prior convictions for robbery and/or burglary, and were subsequently charged for firearm possession, they were candidates for federal prosecution. One of the defendants has been tried and convicted. He is presently awaiting sentencing which we know will be at least fifteen years. As past experience has taught us, attempting

prosecution in the state system under these conditions has returned inadequate sentences in most cases. Now that federal judges have been commissioned with the authority to impose a minimum mandatory sentence of 15 years, we have been able to intervene in the most productive years of the career criminal.

The members of the National District Attorney's Association and I applaud the Senator's amendments to expand the offenses to include violent crime and especially serious drug offenses. Under these amendments we expect the referral rates to rise considerably. This new bill will serve as an effective tool for prosecutors not only in urban areas such as Philadelphia, but also in our suburban and rural communities.

In Philadelphia we are experiencing a particularly serious violent crime and drug problem in a neighborhood known as North Philadelphia. A small group of gang related serious violent drug offenders are terrorizing a neighborhood. Residents are literally frightened to leave their homes, even in daylight. The residents of this neighborhood are daily witnesses to events normally seen only in war or violent movies. There have been two drug related murders in the past two months. Eyewitnesses to those murders have been threatened with death and it has taken the efforts of our entire narcotics division as well as the Philadelphia Police Department to battle the problem. Since a large percentage of search warrant drug cases involve drugs and guns, these cases may prove excellent examples to refer. (A recent search warrant produced 1,000 packs of cocaine and 2 guns; another case produced 200 packets of cocaine and 4 guns).

Senators, I submit that we must not stop at the passage of these amendments. The real solutions to the problem of crime in America are multi-faceted and must result from a combined effort among all criminal justice professionals, (as Ed Dennis and I have begun to address), and our elected officials. This will require a concerted effort to take courageous stands on issues which may not be popular. We must begin to address those alternatives which have been paid little or no attention.

We, as prosecutors, who represent the victims of our communities are powerless without support, both legislatively and financially. The federal government must provide assistance to the states to increase the number of prisons so we may house these chronic offenders. We must instill in our respective state legislatures the courage to pass mandatory minimum prison sentences for certain crimes, as has been done in Pennsylvania. We must re-educate, or in some instances, through the application of public pressure, convince our judges to impose harsher sentences upon chronic offenders. And we must work to persuade you, our representatives in Washington, to continue to fund those anti-crime programs which have directly contributed to the special prosecution of certain crimes, like our career criminal units and our juvenile habitual offender units. It is those substantive actions which will begin to make a difference in the prosecution of violent repeat offenders.

Senator SPECTER. You have three tough judges on the list and if they grant a jury trial, you just go through it with those judges?

Mr. CASTILLE. Absolutely. With those three prior felony convictions as the requisite to be in the program, you have to commit your fourth to get in there. So we are fortunate in securing pretty good sentences from those judges.

Although some of the people qualify for the Armed Career Criminal Act, those offenders will not be referred to the local U.S. attorney because we have a system in place that effectively handles them.

On the other hand, those we do refer afford us the opportunity to attack the issue from two sides. It gives me as the local DA a range of options. The bill that presently exists as the Armed Career Criminal Act, gives us the option of taking a person with just a crime of gun possession and using the act as leverage to obtain a plea bargain.

They could accept their 2½ to 5 in my program or they have the alternative of going to see Mr. Dennis at the U.S. attorney's office and facing an enhanced penalty of at least 15 years without probation or parole.

Senator SPECTER. Have you found it effective, Mr. Castille, on leveraging to get guilty pleas?

Mr. CASTILLE. Yes, we have. My attorneys in the Career Criminal Unit are aware of the specific sentencing requirements of the Armed Career Criminal Act and they use it for leverage to pursuade the defendent to plead to significant time just for only a simple gun arrest.

Some defendants have records such that we will not take a plea. I will show you one later. But we will refer that offender to the U.S. attorney automatically and say "there is nothing we can do for you we want to show you that we are going to treat you seriously."

As you are aware, the Pennsylvania statute of offenses committed with a firearm requires a mandatory minimum of 5 years without parole, probation, or suspended sentence, if a defendant is convicted of robbery or aggravated assault and is in possession of a firearm. There is no provision for simple possession. That is what makes the Federal statute so effective. We can take a person with a horrendous record who has been arrested with simple possession and refer him automatically to the U.S. attorney for immediate prosecution.

They then have the alternative of either proceeding under the Armed Career Criminal Act—and we have referred 19 cases to them, 4 of them since I have been district attorney on January 6 of this year—or use the Special Dangerous Offender Act. The special dangerous offenders in the Federal system in Philadelphia are receiving 10-year sentences for what would be a 2½ to 5-year maximum in the local jurisdiction.

So even under the Special Dangerous Offenders Act, they are getting significantly higher sentences than we as local prosecutors can give them.

Senator SPECTER. But, of course, that act is about to expire.

Mr. CASTILLE. Yes. I was surprised to hear that. That is the first I had heard of it. I think that gives us another tool in the arsenal.

We want to take the most dangerous offender and the person with the longest record and put them in the Armed Career Criminal Act, but still treat a middle-level person not quite as harshly, but very harshly compared to our system, which is a basic 5 years.

I applaud the expansion of the predicate crimes from just robbery and burglary to crimes of violence and to the drug dealers, because so many more offenders will be eligible for Federal prosecution. It will be especially effective in fighting drug traffic in which Philadelphia and other metropolitan jurisdictions have great limitations.

I have a criminal record of a defendant from Philadelphia. His name is Aaron O. This is the gentleman's criminal record. Each one of these pages contains about——

Senator SPECTER. Let the record show that Mr. Castille is standing and has held a criminal sheet which is about 7 feet long, single-spaced.

Mr. CASTILLE. Each one of these pages, Senator, lists approximately six different crimes. So when you talk about a record as long as your arm, we have one almost as long as the table I am sitting at.

Senator SPECTER. Can you await the arrival of a photographer from the Philadelphia Inquirer or the Harrisburg Patriot?

Mr. CASTILLE. Certainly, but I will show you a person whom this act does not affect now.

Senator SPECTER. I mention those papers because those are the reporters who are present. I should make that explicit on the record.

Mr. CASTILLE. This person does not come under the purview of the Armed Career Criminal Act, as it presently exists, nor does it come under the career criminal unit standards as we have them.

This is Mr. Oliver, who, in 1969, had a nasty little habit of——

Senator SPECTER. Mr. Castille, I am going to have to interrupt for just about 5 minutes. Will you wait? I have an emergency in another Senate hearing room.

Mr. CASTILLE. Sure.

Senator SPECTER. Would you wait for me just a few minutes? I will be right back.

[A brief recess was taken.]

Senator SPECTER. Mr. Castille, I will tell you exactly where I have been. I have been upstairs with Senator Stafford. We are trying to get a Social Security Administration building constructed in Wilkes Barre, and that is the hearing for authorization and it was important that I be there, if only momentarily.

Tell me, Mr. Castille, more about the career criminal that you have cited there.

Mr. CASTILLE. This Mr. Oliver, Senator, does not fit under the present Armed Career Criminal Act, because of his predicate offenses. He has no robberies and no burglaries. He does not fit our career criminal unit either because of the crime for which he has been charged—he is charged with possession of a .45 caliber automatic, cocked and locked, as they say, which means it is ready to fire, and 400 blazing packets of heroin.

In the DA's career criminal unit, we do not take drug dealers. This gentleman here, Mr. Oliver, in 1969, was convicted of three

counts of rape and he had a 2- to 10-year sentence, which is lenient under most circumstances, and I imagine he got that because of his age, even though he was a juvenile offender.

Well, he has continued his career of crime and how has 15 arrests for possession of a firearm. He also has 12 sale of drug charges against him, and through the maneuverings of his lawyer, he has done very little time.

The interesting thing about this gentleman is that in 1969, after his conviction on three counts of rape, his first gun possession case was 2 years after that.

Senator SPECTER. What happened on the rape convictions?

Mr. CASTILLE. The rape convictions?

Senator SPECTER. Was he convicted of rape?

Mr. CASTILLE. Convicted on all three; he got 2 to 10 years.

Senator SPECTER. Two to ten years?

Mr. CASTILLE. Yes.

Senator SPECTER. Do you know the judge? Does the record show the judge?

Mr. CASTILLE. Judge Edmund B. Spaeth. I think this was in the time when you were the district attorney.

Senator SPECTER. Well, I had focused on that, Mr. Castille.

Mr. CASTILLE. Well, this was one of your clients, I guess you would say, back in 1969, who is now one of my clients. Hopefully, we have ended his career. He was caught in his final crime, possession of a firearm and sales of drugs, and pled open.

We would have liked to have sent this person to the Armed Career Criminal Act in the Federal courts.

Senator SPECTER. You will probably have a chance.

Mr. CASTILLE. Well, if the new amendments are passed, we will.

Senator SPECTER. He will be back.

Mr. CASTILLE. The judge gave him 7½ to 15 years.

Senator SPECTER. Now, when was that?

Mr. CASTILLE. June 13, 1985. So he has 7½ to 15. If we had the option of referring him to the Federal Government, I am certain that they would have given him at least a minimum of 15 years in jail.

Senator SPECTER. Mr. Castille, do you know from that record how many separate felony convictions that man has for offenses committed as an adult?

Mr. CASTILLE. It is difficult to say how many convictions he has because he had several lawyers who were very manipulative, I believe, of the court system, and I do not want to put their names on the record. But there are a lot of discharges.

His convictions resulted in suspended sentences and various probations. When I see this gentleman's record, I see a lot of prosecutions withdrawn for lack of evidence or witnesses. This is a clear indication that he was intimidating witnesses at gunpoint to keep them from testifying.

If he were in the Federal system, I think we would not see him for a long, long time to come. He is 40 years old and by the time he would get out, he would be 55.

I would also like to talk a little bit about the inclusion of drugs as a predicate offense. In Philadelphia, we recently experienced the murderous nature of the people who deal in drugs.

This person, by the way, whom I described to you is a suspect in two murders that we cannot prove.

We had a recent incident in Philadelphia where a person had two open bench warrants for sales of cocaine in New Jersey and one open bench warrant for sales of cocaine in Philadelphia, and he was on the street.

Sgt. Ralph Galdey, who was, by all accounts, an extremely professional, diligent police officer from Philadelphia, happened to witness this gentleman get into a traffic accident at a street corner.

The defendant fled from the scene in his car and eventually crashed it. Sergeant Galdey gave chase. When he caught up to this defendant, the defendant pulled out a .357 magnum and brutally murdered Sgt. Ralph Galdey.

Senator SPECTER. When did that happen?

Mr. CASTILLE. That was just this past February. It was a very sad event, but it shows you that a person on drugs or selling drugs is more than likely to resort to violence. We have had two examples in Philadelphia where the Armed Career Criminal Act would have been extremely helpful, and these are in search warrant cases.

We had a search warrant that produced from a defendant's house a thousand packets of cocaine and two guns. In another one, we had 200 packets of cocaine and four guns. Under the amended act we could refer them to the U.S. attorney because they also had priors for sales of drugs.

So, the act will afford us a wide range of alternatives to help eliminate the worst offenders from the system. Originally, the National District Attorney's Association believed that the U.S. attorneys would preempt the local prosecutor.

Well, that has not come to pass. The U.S. attorney's office in Philadelphia is hardly equipped to handle the 1,000 or 1,500 armed robberies that we have in Philadelphia every year. What this bill has done is to provide a vehicle for all prosecutors to obtain tougher sentences, especially in jurisdictions without mandatory minimum sentencing laws.

It has given us an effective leveraging tool for pleas and provides us with a viable alternative to take the really violent offenders and treat them as they should be treated, and that is to warehouse them.

Senator SPECTER. Well, I think you put it very well. The toughest sentence available in Pennsylvania—I think it would be the toughest sentence available across the country. Fifteen years to life is the equivalent of a life sentence.

Under the federal system, someone who is given life is eligible for parole after 15 years, so it is a life sentence, as is articulated, and the leveraging factor is well said again.

Mr. Castille, you have said that there has not been the problem which was anticipated by some of usurpation by Federal prosecutors, and I take it that has been the experience generally across the country.

Mr. CASTILLE. Yes. That has been the experience of the prosecutors that have responded and weighed in on this issue.

Senator SPECTER. There was a lot of worry by the National DA's Association that there would be an incursion by the Federal Gov-

ernment. I know that has not happened and I am glad to hear your confirmation.

Mr. CASTILLE. We, as the National District Attorneys, support this. As a local prosecutor, I would be more than happy to give the U.S. attorney all of my robbery cases, since we handle 45,000 cases a year, but that is just not going to happen.

We can handle some of them adequately within our system, but it is great to have the fallback of the Armed Career Criminal Act to handle the really violent and bad offenders.

Senator SPECTER. Well, that is very, very helpful, Mr. Castille. Thank you very much for coming in today. I appreciate it very much. I would like to make that criminal record a part of the subcommittee files if we may have it.

Mr. CASTILLE. I have an extra copy. It is not quite as dramatic; we separated the pages.

Senator SPECTER. All right, that is fine.

Well, this is very informative. I think that it sets a good record basis as we try to have a record basis for our action by the full committee and ultimately by the Senate and the Congress. We thank you very much for joining us.

Mr. CASTILLE. My pleasure.

Senator SPECTER. That concludes the hearing.

[Whereupon, at 12:15 p m., the subcommittee was adjourned.]

○

62-982 (62)